

Arrest is presumed to be false if ...

MEMORANDUM OF POINTS AND AUTHORITIES

1. Arrest is presumed to be false; officer has the burden of proof

The only thing the plaintiff needs to plead and to prove if alleging false arrest, is either (1) that the defendant made an arrest or imprisonment, or (2) that the defendant affirmatively instigated, encouraged, incited, or caused the arrest or imprisonment. *Burlington v. Josephson*, 153 Fed.2d 372,276 (1946).

"When the plaintiff has shown that he was arrested, imprisoned or restrained of his liberty by the defendant, "the law presumes it to be unlawful."

People v. McGrew, 20 Pac. 92 (1888); *Knight v. Baker*, 133 P. 544(1926).

"The burden is upon the defendant to show that the arrest was by authority of law." *McAlee v. Good*, 65 Atl. 934, 935 (1907); *Mackie v. Ambassador*, 11 P.2d 6 (1932).

"Any arrest made without a warrant, if challenged by the defendant, is presumptively invalid...the burden is upon the state" to justify it as authorized by statute, and as not violative of constitutional provisions. *State v. Mastrian*, 171 N.W.2d 695 (1969); *Butler v. State*, 212 So.2d 577 (Miss 1968)

"As in the case of illegal arrests, the officer ... must keep within the law at his peril." *Thiede v. Scandia*, 217 Minn. 231, 14 N.W.2d 400 (1944).

2. Must show warrant upon request

"He must show it to the accused, if requested to do so." *Smith v. State*, 208 S.2d 747 (Miss., 1968).

"If demanded, he must produce the warrant and read it to the accused, that he may know by what authority and for what cause he is deprived of his liberty." *State v. Shaw*, 89 S.E. 322 (1916).

"An accused person, if he demands it, is entitled to have the warrant for his arrest shown to him at the time of arrest." 42 L.R.A. 682, 51 L.R.A. 211, *Crosswhite v. Barnes*, 124 S.E. 242, 245 (1924).

"A special deputy is bound to show his warrant if requested to do so, and if he omit, the party against whom the warrant issues may resist an arrest, and the warrant under such circumstances is no protection against an action for an assault, battery and false imprisonment." *Frost v. Thomas*, 24 Wendell's Rep. (N.Y.) 418, 419 (1840).

"It is doubtless the duty of an officer who executes a warrant of arrest to state the nature and substance of the process which gives him the authority he professes to exercise, and, if it is demanded, to exhibit his warrant, that the party arrested may have no excuse for resistance." *Shovlon v. Com.*, 106 Pa. 369, 5 Am. Crim. Rep. 41 (1884)

"It was the duty of an officer who attempts to make an arrest to exhibit the warrant if he has one." *Jones v. State*, 114 Ga. 79, 39 S.E. 861 (1901)

3. Warrant must be valid

A constable justifying an imprisonment under a warrant must show that the warrant on its face is legal, and that the magistrate had jurisdiction of the subject-matter. 51 L.R.A. 197, *Poulk v. Slocum*, 3 Blackfords (Ind). 421. **(Meaning, you should also demand a copy of the affidavit giving the judge probable cause to issue the warrant. All warrants must issue upon submission of an affidavit of probable cause.)**

"A warrant is regarded as insufficient and thus void if, on its face, it fails to state facts sufficient to constitute a crime." *Wharton's Crim. Proc.*, 12th Ed., vol. 1, p. 152 (1974).

4. No rubber-stamp "signature"

"The United States Supreme Court ... stressed the need for 'individualized review' to avoid the issuance of 'rubber stamp' warrants." *State v. Paulick*, 277 Minn. 140, 151 N.W.2d 596 (1967).

5. False arrest is assault and battery

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right, and only the same right, to use force in defending himself as he would have in repelling any other assault and battery." *State v. Robinson*, 72 Atl.2d 262 (1950).

"An arrest without warrant is a trespass, an unlawful assault upon the person ... where one is about to be unlawfully deprived of his liberty he may resist the aggressions of the offender, whether of a private citizen or a public officer, to the extent of taking the life of the assailant, if that be necessary to preserve his own life, or prevent infliction upon him of some great bodily harm." *State v. Gum*, 69 S.E. 464 (1910).

"Every person has the right to resist an unlawful arrest ... and, in preventing such illegal restraint of his liberty, he may use such force as may be necessary." *Columbus v. Holmes*, 152 N.E.2d 306 (1958).

6. No handcuffs (sorry, OSHA)

"But a constable cannot justify handcuffing a prisoner unless he has attempted to escape, or unless it be necessary in order to prevent his doing so." 51 L.R.A. 216.

"The handcuffing was utterly unlawful." *Osborn v. Veitch* 1 Foster & Fin Eng Rep 317.

7. Go immediately to a magistrate (no photographs, no fingerprinting)

"The one arresting has "a duty to immediately seek a magistrate," and failure to do so "makes a case of

false imprisonment." *Heath v. Boyd*, 175 S.W.2d. 217 (1943); *Brock v. Stimson*, 108 Mass. 520 (1871).

"To detain the person arrested in custody for any purpose other than that of taking him before a magistrate is illegal." *Kominsky v. Durand*, 12 Atl.2d. 654 (1940).

"Any undue delay is unlawful and wrongful, and renders the officer himself and all persons aiding and abetting therein wrongdoers from the beginning." *Ulvestad v. Dolphin*, 278 Pac. 684 (1929).

"The taking of the plaintiff's picture before conviction was an illegal act." *Hawkins v. Kuhne*, 137 NY Supp 1090, 153 App Div 216 (1912).

"The power to arrest does not confer upon the arresting officer the power to detain a prisoner for other purposes." *Geldon v. Finnegan*, 252 N.W. 372 (1934).

"Compulsory fingerprinting before conviction is an unlawful encroachment...[and] involves prohibited compulsory self-incrimination." *People v. Helvern*, 215 N.Y. Supp. 417 (1926)

Summary

A warrant must be issued and be signed (no rubber stamp) by a judge who has jurisdiction;
must state the facts showing jurisdiction;
must be based upon probable cause;
must name the offense committed;
must contain an affidavit (under oath) by the accuser, stating FIRST HAND facts constituting a crime;
must name the party to be arrested, or describe him sufficiently to identify him;
must offer the warrant and the affidavit for inspection upon request;
No handcuffs;
must take me immediately before a magistrate, and hold me for no other purpose (no photographs, no fingerprinting);
You are responsible for everything that happens to me even

if you relinquish custody to an assign;
Unlawful arrest is assault, battery & trespass;
There is no immunity in a false arrest case;
Good faith is not a defense to sustain false arrest.

Lastly . . . If the warrant states as cause to issue, a mere civil/statutory infraction not rising to the level of a capital crime . . . the officer must produce title to your biological property/body, before said officer can make the arrest and take possession of the biological property. You do not by accommodation, accept the offer of arrest for any statutory infraction unless the statute defines a capital crime and probable cause exists.

NOTE:

The arresting officer that this information has been presented to, has both a civil and legal duty to become informed with the material incorporated herein before an arrest is determined to have cause to be made.